INDEX

—BRIEF—

		Page
(a)	Reference to Official Report of Opinion of Lower Court	1
(b)	Statement of Grounds of Jurisdiction	1
(c)	Reference to Statute, Validity of which is Involved	4
(d)	Question Presented	4
(e)	General Statement (See Section (b))	4
(f)	Summary of Argument	4
(g)	Argument	6
	I. The Arkansas statute directly interferes with the performance of federal functions and cannot, therefore, under the doctrine of implied inter-governmental immunity, constitutionally apply to appellants' activities herein	6
	II. The Arkansas statute is inconsistent with federal law regulating procurement by the United States and therefore cannot constitutionally apply to such procurement	14
(h)	Conclusion	19
Appendix — Act 124 of Acts of General Assembly of Arkansas for the Year 1939 and Amendatory Act		20

—CITATIONS—

Cases:

Alabama v. *King & Boozer*, 314 U.S. 1	7
Arizona v. *California*, 283 U.S. 423	6
Baltimore & Annapolis R. Co. v. *Lichtenberg*, 176 Md. 383, 4 A. 2d 734, appeal dismissed, 308 U.S. 525	8, 12
Carson v. *Roane-Anderson Co.*, 342 U.S. 232	14
Curry v. *United States*, 314 U.S. 14	7
Esso Standard Oil Co. v. *Evans*, 345 U.S. 495	7
Federal Land Bank v. *Bismarck Co.*, 314 U.S. 95	14
Franklin Nat. Bank v. *New York*, 347 U.S. 373	14
Graves v. *New York ex rel. O'Keefe*, 306 U.S. 466	7
Hunt v. *United States*, 278 U.S. 96	6
James v. *Dravo Contracting Co.*, 302 U.S. 134	7, 8, 12
Johnson v. *Maryland*, 254 U.S. 51	6
Johnson v. *Yellow Cab Co.*, 321 U.S. 383	17
Kern-Limerick, Inc. v. *Scurlock*, 347 U.S. 110	6, 15, 17
Mayo v. *United States*, 319 U.S. 441	6
McCulloch v. *Maryland*, 4 Wheat. 316	6
Metcalf & Eddy v. *Mitchell*, 269 U.S. 514	7, 8, 12
Ohio v. *Thomas*, 173 U.S. 276	6
Osborne v. *United States Bank*, 9 Wheat. 738	7
Penn Dairies v. *Milk Control Commission*, 318 U.S. 261	8, 12, 13, 14
Pittman v. *Home Owners' Loan Corp.*, 308 U.S. 21	14
Railroad Company v. *Peniston*, 18 Wall. 5	8
Railway Mail Ass'n v. *Corsi*, 326 U.S. 88	8
Society for Savings etc. v. *Bowers*, No. 204, Oct. Term, 1954, decided May 16, 1955, 23 U.S. Law Week 4201	6
Standard Oil Co. v. *Johnson*, 316 U.S. 481	17
Stewart & Co. v. *Sadrakula*, 309 U.S. 94	8, 12
United States v. *Snyder*, 149 U.S. 210	6
United States v. *Summerlin*, 310 U.S. 414	6
Wilson v. *Cook*, 327 U.S. 491	7

Statutes: Page

40 U.S.C. 255 2

Act 124 of 1939, as amended (Ark. Stats. 1947 §§ 71-701 to 71-721):

Section 4 9
Section 8 9
Section 9 12
Section 13 ..... 9, 10, 11
Section 17 10
Section 18 11

Armed Services Procurement Act of 1947 (Act of February 19, 1948, 62 Stat. 21, 41 U.S.C. 151 *et. seq.*):

Section 2(b) (41 U.S.C. 151(b)) 16
Section 2(c) (41 U.S.C. 151(c)) 15, 16
Section 3 (41 U.S.C. 152) 15

Buy American Act (41 U.S.C. 10 (b)) 18
Davis-Bacon Act (40 U.S.C. 276a-2 (a)) 18
Walsh-Healey Act (41 U.S.C. 37) 18

Regulations:

Armed Services Procurement Regulations:

400.301 (32 CFR 400.301) 17
401.406-3 (32 CFR 401.406-3) 17
402.101 (32 CFR 402.101) 17
32 CFR 400.600 to 400.608 18

Army Procurement Regulations:

590.357 (32 CFR 590.357) 17
32 CFR 590.303 to 590.303-5 18

Miscellaneous:

H. Rep. No. 109, 80th Cong., 1st Sess., p. 3 15
Sen. Rep. No. 571, 80th Cong., 1st Sess.:
p. 2 ..... 15, 16
p. 3 16

United States Standard Form No. 23—Rev., 41 U.S.C. App. § 54.13:

Article 11 13
Article 17 13

United States Standard Form No. 25-A, 41 U.S.C., App. § 54.16 13

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 51

LESLIE MILLER, INC. ..... *Appellant,*

v.

STATE OF ARKANSAS ..... *Appellee.*

APPEAL FROM SUPREME COURT OF ARKANSAS

BRIEF OF APPELLANT

(a)

The official report of the opinion delivered by the Supreme Court of Arkansas in this cause is *Leslie Miller, Inc.* v. *State of Arkansas*, MS opinion delivered July 4, 1956, Vol. 99 of Law Reporter, Page 701 of No. 20 (R. 9-12).

(b)

The grounds on which the jurisdiction of this Court is invoked are as follows:

The appellant was found guilty as charged on each of two counts of an information filed by the Prosecuting Attorney of Pulaski County, Arkansas, on behalf of the State

of Arkansas. The information (R. 1-2) charged appellant with violating the provisions of Act 124 of 1939, as amended (Ark. Stats. 1947, Sections 71-701 to 71-721 inclusive), in that the appellant, without authority from the State Licensing Board for General Contractors, (1) submitted a bid to the United States for the construction of certain facilities at a cost in excess of $20,000 on property owned, or leased, by the United States in Arkansas and (2) thereafter executed a contract to do said construction and entered into the performance of the contract. The appellant was fined $100 on each of the two counts of the information (R. 6-7).

The case was tried without a jury upon stipulations of fact (R. 6-7). As amended, the stipulations reveal:

(1) That, during the periods here involved, appellant was not licensed to engage in contracting work in the State of Arkansas and had not applied for a license to do so as required by Act 124 of 1939, as amended. Although not licensed, the appellant submitted a bid to the United States for the construction of certain projects at a cost in excess of $20,000 on property owned by the United States in Arkansas. In due course, appellant's bid was accepted and contracts were formally executed in Pulaski County, Arkansas. Thereafter, the appellant began performance of its contract (R. 4-6).

(2) That the lands on which the facilities are being constructed were purchased by the United States with the consent of the State of Arkansas, but that the United States has not accepted jurisdiction over the lands as provided in 40 U. S. C. 255 (R. 5).

(3) That bids were received for the construction of these facilities from contractors licensed to engage in the contracting business in Arkansas, but that such bids were in excess of the bid of the appellant, who was the lowest responsible bidder (R. 5); and that certain responsible

bidders did not bid on the construction of these facilities because they were not licensed to engage in the contracting business in Arkansas (R. 6).

In the trial of the case in the First Division of the Circuit Court of Pulaski County, Arkansas, the appellant pleaded not guilty, asserting that (1) Act 124 of 1939, as amended, was not applicable to its activities in submitting its bid, procuring the contract, and performing work in compliance therewith, and (2) the application of the Act to it would be unconstitutional (a) by reason of the doctrine of implied intergovernmental immunity and (b) was in direct conflict with Federal law regulating procurement by the United States; and on appeal to the Supreme Court of Arkansas argued in its brief these same propositions. Therefore, the conviction of the appellant in the lower court and the affirmance of the conviction by the Supreme Court in spite of appellant's plea of not guilty and the assertion in both courts of the inapplicability and unconstitutionality of the application of the aforesaid Act to it is a declaration by each of said courts of not only the applicability of the Act to the appellant, but of its constitutionality.

The date of the judgment of the First Division of the Circuit Court of Pulaski County, Arkansas, convicting and fining the appellant is the 1st day of April, 1955 (R. 6).

The date of the opinion of the Supreme Court of Arkansas affirming the judgment of conviction of appellant is July 4, 1955 (R. 9).

The date of the order of the Supreme Court of Arkansas denying the appellant's motion for rehearing of its decision is October 3, 1955 (R. 15).

Notice of appeal to the Supreme Court of the United States was filed with the clerk of the Supreme Court of Arkansas on December 29, 1955 (R. 16).

The statutory provision believed to confer on this Court jurisdiction of appeal is Section 1257(2) of Title 28 of the United States Code.

(c)

The validity of Act 124 of the Acts of the General Assembly of the State of Arkansas of 1939, as amended (Ark. Stats. 1947, Sections 71-701 to 71-721, inclusive), as applied to the appellant is involved; and this Act and the amendatory act are set out verbatim in the appendix hereto.

(d)

The question presented by this appeal is whether appellant may constitutionally be convicted of engaging in business as a contractor without the authority of the State Licensing Board for General Contractors of Arkansas for submitting a bid to the United States and executing and performing a contract with the United States for military construction in Arkansas, in violation of Act 124 of the Acts of the General Assembly of Arkansas of 1939, as amended (Ark. Stats. 1947, Sections 71-701 to 71-721, inclusive), (1) when the objects and purposes of the Act of protecting the public health, welfare, and safety are afforded by Federal statutes and regulations; (2) when the Arkansas statute impairs the exercise of Federal functions and (3) when the Arkansas statute is inconsistent with Federal law regulating procurement.

(e)

A statement of the case heretofore appears in connection with the statement of grounds of jurisdiction of this Court.

(f)

A summary of the argument to be made is as follows:

As related to the exercise of sovereign powers of states as opposed to the exercise of Federal functions, the effect of the decisions of this Court is that the property, functions, and instrumentalities of the Federal Government are immune from direct state regulation, but that state laws and regulations are applicable to those dealing with the Federal Government (not acting as the agent thereof) when the laws and regulations accomplish a purpose in connection with the exercise by the state of its reserved powers, and are not in conflict with Federal laws, even though the exercise of such reserve powers may incidentally and indirectly burden the Federal Government; but where the application of the state law or regulation, as in this instance, is not necessary to the accomplishment of the only intended purpose of protecting the welfare of its citizens, and (1) its application interferes with the performance of Federal functions and (2) is in conflict with Federal laws and regulation, then the application of the state law or regulation is invalid.

(g)

ARGUMENT

I

The Arkansas Statute Directly Interferes With the Performance of Federal Functions and Cannot, Therefore, Under the Doctrine of Implied Inter-Governmental Immunity, Constitutionally Apply to Appellants' Activities Herein.

From *McCulloch* v. *Maryland*, 4 Wheat. 316 to *Kern-Limerick, Inc.* v. *Scurlock*, 347 U. S. 110, and *Society for Savings etc.* v. *Bowers*, No. 204, October Term, 1954, decided May 16, 1955, 23 U. S. Law Week 4201, the basic doctrine that the properties, functions, and instrumentalities of the Federal Government are immune from state taxation has been consistently adhered to by the United States Supreme Court. Correlatively, the constitutional immunity of the properties, functions, and instrumentalities of the Federal Government from state regulation has similarly been firmly established. *United States* v. *Snyder*, 149 U. S. 210 (federal lien enforcible without compliance with state law requiring recordation and timely enforcement); *Ohio* v. *Thomas*, 173 U. S. 276; (state law requiring display of placard where oleomargarine is served not applicable to a federal soldiers' home); *Johnson* v. *Maryland*, 254 U. S. 51 (state licensing requirements inapplicable to driver of mail truck for United States Post Office); *Hunt* v. *United States*, 278 U. S. 96 (state restrictions inapplicable to federal agents in a national forest and game preserve); *Arizona* v. *California*, 283 U. S. 423 (plans and specifications for federal dam not subject to approval of state engineer); *United States* v. *Summerlin*, 310 U. S. 414, (obligation owed United States not debarred from presentation against a decedent's estate because not filed within time specified by state law); *Mayo* v. *United States*, 319 U. S. 441, (fertilizer shipped by United States to farmers

not subject to state inspection and stamp tax); see *Osborne* v. *United States Bank;* 9 Wheat 738, 867.

In contrast, the Supreme Court has wavered in its application of this principle to private parties who, in some manner, dealt with or acted for the Government. In earlier cases, it was held that, even without Congressional action, the income or possessions or transactions of such parties were also immune from state taxation. In more recent years, this doctrine of implied delegated immunity has been sharply curtailed. *Esso Standard Oil Co.* v. *Evans,* 345 U. S. 495; *Wilson* v. *Cook,* 327 U. S. 491; *Alabama* v. *King & Boozer,* 314 U. S. 1; *Curry* v. *United States,* 314 U. S. 14; *Graves* v. *New York ex rel. O'Keefe,* 306 U. S. 466; *James* v. *Dravo Contracting Co.,* 302 U. S. 134.

These cases reject the earlier, now untenable, view that an independent contractor is clothed with governmental immunity solely because of his contractual relationship with the Federal, or a State, Government. As the Court pointed out, a tax imposed upon an independent contractor is not laid upon a government instrumentality. *James* v. *Dravo Contracting Co., supra; Metcalf & Eddy* v. *Mitchell,* 269 U. S. 514. And although such taxes may result indirectly in an increased economic burden upon the Government to the extent that they are passed on by the independent contractor, "that is but a normal incident of the organization within the same territory of two independent taxing sovereignties. The asserted right of the one to be free of taxation by the other does not spell immunity from paying the added costs, attributable to the taxation of those who furnish supplies to the Government and who have been granted no tax immunity." *Alabama* v. *King & Boozer, supra* at 9. By analogy to these tax cases, state regulation of independent contractors has also been sustained in the face of increased economic burdens

passed on indirectly to the Government by the independent contractors. *Penn Dairies* v. *Milk Control Commission*, 318 U. S. 261; *Stewart & Co.* v. *Sadrakula*, 309 U. S. 94; *Baltimore & Annapolis R. Co.* v. *Lichtenberg*, 176 Md. 383, 4 A 2d 734, appeal dismissed, 308 U. S. 525; cf. *Railway Mail Ass'n* v. *Corsi*, 326 U. S. 88, 95-96.

Tersely stated, the critical inquiry posed in these independent contractor cases is whether the state tax or regulation "interfere(s) in any substantial way with the performance of federal functions." *James* v. *Dravo Contracting Co.*, 302 U. S. at 161. The test has also been stated in these terms: Does the tax or regulation "in truth deprive (the independent contractors) of power to serve the government as they were intended to serve it, or does hinder the efficient exercise of their power." *Railroad Company* v. *Peniston*, 18 Wall. 5, 36, quoted in *James* v. *Dravo Contracting Co.*, *supra* at 154-155; does it impair "in any substantial manner the ability of (independent contractors) to discharge their obligations to the (Government) or the ability of (the Government) or its subdivisions to procure the services of private individuals to aid them in their undertakings." *Metcalf & Eddy* v. *Mitchell*, 269 U. S. at 526. If there is substantial impairment, the state law necessarily falls, since "the authority of state laws or their administration may not interfere with the carrying out of a national purpose. Where enforcement of the state law would handicap efforts to carry out the plans of the United States, the state enactment must, of course, give way." *Stewart & Co.* v. *Sadrakula*, 309 U. S. at 103-104.

Viewed in this light, we submit that the Arkansas statute here involved is unconstitutional. Although the Act seemingly is not immediately addressed to the Government and purports only to regulate the activities of private con-

tractors, it directly impinges on the power of the Government to conduct vital federal functions.

To begin with, it burdens the Government in its selection of its agents. Sections 8 and 13 of the Act requires all contractors to apply for, obtain and record a license before they may bid upon any project whose cost is $20,000 or more. This requirement, without more, limits the Government's selection of contractors to those holding recorded licenses. The Government's choice is even further curtailed by the administrative barriers raised by the Act with respect to the licensing procedure. Section 4 provides that the licensing board shall have two regular meetings in each year; one in the month of February, and one in the month of August. Section 8 provides that written applications for examinations for licenses must be filed thirty days prior to such meetings. However, the Government cannot effectively function under a system whereby it issues invitations for bids during only these limited periods of the year, and this interval between the invitation and the bid is the 3-4 month period between application for license and action thereon by the Licensing Board. Consequently, unless it is assumed, contrary to fact, that the issuance of invitations to bid on Government projects and the time fixed for submitting bids pursuant thereto are so geared as to permit non-licensed contractors to meet these statutory requirements, it is obvious that, as a normal matter, the Government's contract awards must, if the Act may validly be applied, be limited to those few contractors who already had a license when the Government's invitation is issued, and who not only possess but have available the organization and equipment to commit to projects of the magnitude involved.

Nor is it any answer that out of state contractors may obtain licenses prior to the issuance of the invitation. While this is possible as a theoretical matter, it is not prac-

tically feasible. Since the type of invitations and the time of issuance thereof are typically not known in advance, the thousands of out of state contractors cannot be expected to obtain licenses in Arkansas merely for the privilege of possibly submitting a bid when and if there is issued an invitation for bids on a project they are equipped to perform.

That the Act imposes a real rather than hypothetical burden is apparent from the record. In each of the pending cases, it is admitted that "certain responsible contractors did not bid on the construction of these facilities, because they were not licensed to engage in the contracting business in Arkansas"—presumably for fear of prosecution under the Act. Further, although bids were received from licensed contractors, in each of the pending cases the lowest responsible bidder was not licensed. Insofar as the Act operates to eliminate a lowest responsible bidder, it must be conceded that the resulting higher cost thus incurred by the United States is not a fatal blow. What is critical here, however, is not the higher cost but the fact that the Act operates to restrict the Government in its free choice of its agents.

Second, the Act not only prohibits unlicensed contractors from even submitting bids but goes on to declare it to be a violation of the Act for such contractors to contract to construct or undertake to construct projects costing $20,000 or more (Sec. 13). The violation is declared to be a misdemeanor punishable by a fine of not less than $100 nor more than $200 for each offense, "each day to constitute a separate offense" (Sec. 13). Moreover, the Act empowers the licensing board to secure a writ of injunction for such violations "upon affidavit" and "without bond" (Sec. 17). Accordingly, seen from the viewpoint of the unlicensed contractor who has successfully bid on a Government contract, there can be no doubt that the Act substantially impairs his ability to perform his contrac-

tual obligations to the Government. Indeed, to point out that the Act hinders the unlicensed contractor from efficiently performing his work is grossly to understate the matter. In fact, the Act as implemented effectively precludes any performance of his contract.

Concomitantly, and of greater significance, these provisions of the Act necessarily frustrate the Government's attempt to carry out federal functions. The United States is told in so many words that if it contracts with an unlicensed contractor, the contractor will not only be subjected to a daily fine but will also be enjoined from executing the contract. Such action by the State of Arkansas squarely interferes with the carrying out of a national purpose.

Moreover, the Act does not stop there. It goes on to regulate the Government itself as well as the contractor. Section 18 requires the Government to include in its invitations to bidders and in its specifications a copy of the Act to convey to the invited bidder, whether or not he is a resident of the State, that he must have a license before his bid is considered. Plainly, this provision usurps the prerogative of Congress to specify the provisions of Government contract instruments. Finally, Section 13 bars the United States from bringing any action "either at law or in equity to enforce any provision of any contract entered into in violation of this act." In the light of this prohibition, any assumption that the Act's operation merely imposes an increased economic burden on the United States is clearly untenable. Read as a whole, it can only be concluded that the Act flatly prohibits the United States from effectuating national policy in Arkansas except on terms fixed by the State. So viewed, the Act must yield to overriding considerations of constitutional immunity.

In the final analysis, the doctrine of intergovernmental immunity rests upon the principle that "neither

government may destroy the other nor curtail in any substantial manner the exercise of its powers. Hence the limitation upon the taxing (or regulatory) power of each, so far as it affects the other, must receive a practical construction which permits both to function each with the other; and that limitation cannot be so varied or extended as seriously to impair the taxing (or regulatory) power of the government imposing the tax (or regulation) • • • or the appropriate exercise of the functions of the government affected by it." *Metcalf & Eddy* v. *Mitchell*, 269 U. S. at 523-524, quoted with approval in *James* v. *Dravo Contracting Co., supra* at 156-157. In the cases in which state regulation was upheld—*Baltimore & Annapolis R. Co.* v. *Lichtenberg, supra*; *Stewart & Co.* v. *Sadrakula, supra*; *Penn Dairies* v. *Milk Comm'n, supra* — it was possible to accommodate both ends. On the one hand, the purpose of the state regulation in those cases was to safeguard the health and safety of its citizens (*Stewart & Co.* v. *Sadrakula*, 309 U. S. at 104; *Penn Dairies* v. *Milk Control Comm'n*, 318 U. S. at 279-281); on the other hand, the state regulations did not substantially interfere with the performance of federal functions but merely increased the cost of the Government's operations.

Here, however, that same balance cannot be struck. It may be argued that this statute is also designed to protect the public health and safety in that the licensing board is required to consider the following qualifications of any applicant for a license: experience, ability, character, the manner of performance of previous contracts, financial condition, and equipment (Sec. 9). *Vis a vis* the federal Government, however, determination of such qualifications by the board is unnecessary for the public health and safety of Arkansas citizens. It cannot be seriously suggested that the United States is incompetent to pass upon the qualifications of its independent contractors. See *infra*, pp. 16-18. Moreover, the standard form provisions of gov-

ernment contracts, embodying statutory requirements, are designed to safeguard the interests of all citizens, including those of Arkansas. Article 11 of U. S. Standard Form No. 23-Rev. (41 U. S. C. App. § 54.13) provides for overtime pay for work in excess of eight hours daily. Article 17 requires the payment of prevailing wages, payment of wages not less than once a week without rebate on any account, posting of the scale of wages, and provides for termination for breach of these provisions. In addition, the contractor is required to give a bond for payment to all persons supplying labor and material in the prosecution of the work. See U. S. Standard Form No. 25-A, 41 U. S. C. App. § 54.16. In this light, it is apparent that striking down the statute here in question as applied to government contractors would not seriously impair the police power of the State nor prevent the Act's objectives from being realized.

On the other hand, looking at the obverse side of the coin, the operation of the Act does seriously impair the appropriate exercise of federal functions. As we have seen, the Act burdens the United States in its selection of its agents and in its relations with them. The Act makes it a misdemeanor for unlicensed contractors to bid upon, contract for, or undertake to construct a federal project; it authorizes the licensing board to obtain injunctions against unlicensed contractors; and it renders contracts with unlicensed contractors legally and equitably unenforcible. In *Penn Dairies* v. *Milk Control Comm'n, supra,* the Supreme Court pointed out that the government and its officers, under the state regulation there involved, "may purchase milk from whom and at what price they will, without incurring any penalty" (318 U. S. at 270). Here, however, the state regulation goes beyond merely increasing the cost to the Government and imposes restrictions which constitute a direct physical interference with federal activities and impose a "penalty" upon the United States. We sub-

mit, therefore, that the statute exceeds the constitutional bounds of state authority.

II

The Arkansas Statute Is Inconsistent With Federal Law Regulating Procurement by the United States and Therefore Cannot Constitutionally Apply to Such Procurement.

Up to this point, we have urged that the Arkansas statute is invalid because it violates the implied constitutional immunity of the functions of the United States from state regulation. But we need not rely here on an implied prohibition. As the Supreme Court has repeatedly recognized, state law must also yield if it conflicts with Congressional legislation, either as read in the light of its history or as construed by the executive officers charged with the exercise of the contracting power. *Franklin Nat. Bank* v. *New York*, 347 U. S. 373; *Carson* v. *Roane-Anderson Co.*, 342 U. S. 232; *Federal Land Bank* v. *Bismark Co.*, 314 U. S. 95; *Pittman* v. *Home Owners' Loan Corp.*, 308 U. S. 21; see *Penn Dairies* v. *Milk Control Comm'n.*, 318 U. S. at 271-278. There is, we submit, such a conflict here.

In *Penn Dairies*, the Supreme Court noted that it had long been the traditional procurement policy of the Government, embodied in a succession of statutes going back to 1809, that awards be made to the lowest responsible bidder after open competitive bidding. Competitive bidding was excused, however, where immediate performance was required by the public exigency or where it was impracticable to secure competition. 318 U. S. at 271-272. The most recent codification of Government procurement laws, the Armed Services Procurement Act of 1947 (Act of February 19, 1948, 62 Stat. 21, 41 U. S. C. 151 *et seq.*) reaffirms this traditional policy. The Act contemplates that the great majority of contracts for supplies and services will be placed through competitive bidding but that in a limited

number of situations the public interest requires that purchases be made by negotiation. See H. Rep. No. 109, 80th Cong., 1st Sess., p. 3; Sen. Rep. No. 571, 80th Cong., 1st Sess., p. 2. Recognizing that there may be more important factors than cost (Sen. Rep. No. 571, *supra*, p. 2), the Act places expanded authority and responsibility in the hands of those charged with the procurement function by spelling out the situations in which the exercise of judgment is permitted. Cf. *Kern-Limerick* v. *Scurlock*, 347 U. S. 110. Thus, in addition to those instances where the public exigency will not admit of the delay incident to advertising or where it is impracticable to secure competition, Section 2(c) of the Act (41 U. S. C. 151(c)) lists 15 other situations in which contracts may be negotiated without advertising.

In this light, were the issue here merely one of the validity of an increased economic burden on the United States because of the impact of the Arkansas statute, *Penn Dairies* would appear to be dispositive. The Armed Services Procurement Act of 1947, like the earlier procurement laws, is wholly consistent with the continued existence of local laws which affect the price of goods or services sold to the Government. But as we pointed out in Part I, *supra*, pp. 3-12, that is not the situation here. Our complaint is that the Arkansas statute attempts to regulate the Government's selection of its agents; that it prohibits the Government from determining for itself the most effective manner of performing vital federal functions.

As we have indicated, cost is not the dispositive factor under the Armed Services Procurement Act of 1947. Even where awards are to be made on the basis of competitive bidding, the guiding principle fixed by the Act is that the award be made "to that *responsible* bidder whose bid • • • will be most advantageous to the Government, price and *other* factors considered" (Sec. 3, 41 U. S. C.

152, emphasis added). Subordination of the cost factor is also evidenced by the Congressional declaration of policy in Section 2(b) (41 U. S. C. 151(b)) "that a fair proportion of the total purchases and contracts for supplies and services for the Government shall be placed with small business concerns." It is further demonstrated by the greatly expanded number of situations spelled out in Section 2(c) (41 U. S. C. 151(c)) in which procurement officials are authorized to depart from competitive bidding and to negotiate contracts in the public interest. The whole thrust of the Act is to do away with "the award of contracts in a purely mechanical way to the lowest bidder with no exercise of judgment or discretion on the part of the purchasing officer." Sen. Rep. No. 571, *supra*, p. 2. It rests upon the premise that "the exercise of judgment by the purchasing officer should not merely be permitted but should be encouraged." Sen. Rep. No. 571, *supra*, p. 3.

The Arkansas statute, however, places severe limitations upon this exercise of judgment and discretion. It tells Government procurement officers that they can contract only with those contractors approved by the Arkansas licensing board. Under the Arkansas statute, the Government can undertake no construction in that State with the agents it thinks best qualified to perform the job unless the State concurs in that judgment. If, in the opinion of the responsible federal procurement officials, contractors licensed by Arkansas are not as well qualified to carry out federal functions as out-of-state non-licensed contractors, those officials are faced with the choice of acting contrary to their considered judgment or of abandoning the construction of federal projects in Arkansas. Clearly, the Armed Services Procurement Act of 1947 precludes the State from posing such alternatives.

That the Arkansas statute conflicts with Congressional policy is further demonstrated by the pertinent regulations

issued under the Armed Services Procurement Act of 1947. Since these regulations have the force of law, their application in this case has no less force and effect than the specific directions of Congress. *Standard Oil Co.* v. *Johnson,* 316 U. S. 481, 484; *Johnson* v. *Yellow Cab Co.,* 321 U. S. 383, 389-390; cf. *Kern-Limerick Inc.* v. *Scurlock,* 347 U. S. 110.

Armed Services Procurement Regulation 400.301 (32 CFR 400.301) states that "it shall be the objective of each department to use that method of procurement which will be most advantageous to the Government—price, quality, and other factors considered." Expanding on these factors, Regulation 401.406-3 (32 CFR 401.406-3) provides, with respect to competitive bidding, that, besides price, procurement officials are to take into account *inter alia* the judgment, skill and integrity of the bidder; his reputation and experience; prior work of a similar nature done by him; and the advantages or disadvantages to the Government that might result from making multiple awards. With respect to negotiated contracts, Regulation 402.101 (32 CFR 402.101) requires contracting officers to give due attention to a minimum of 17 factors, including comparison of prices quoted; comparison of business reputations, capabilities and responsibilities of the respective firms who submit quotations; consideration of the quality of the supplies or services offered; consideration of delivery requirements; consideration of the size of the business concern; consideration as to whether the prospective supplier requires expansion or conversion of plant facilities; consideration of the extent of subcontracting; consideration of the existing and potential workload of the prospective supplier; and consideration of broadening the industrial base by the development of additional suppliers. See also to the same effect Army Procurement Regulation 590.357 (32 CFR 590.357).

Concomitantly, the regulations provide that certain firms and individuals will not be awarded contracts. Those made ineligible include firms and individuals found to have violated the Walsh-Healey Act (41 U. S. C. 37), the Davis-Bacon Act (40 U. S. C. 276a-2(a)), the Buy American Act (41 U. S. C. 10(b)); firms and individuals convicted in a court of competent jurisdiction of fraud or violation of the anti-trust laws; and firms and individuals found by clear and convincing evidence to have violated certain named contract provisions. See 32 CFR 400.600 to 400.608; 32 CFR 590.303 to 590.303-5.

Nowhere in these regulations is there any provision that procurement officials shall take into consideration in making awards the factor whether a firm has complied with local licensing requirements such as those involved here. Nor do the regulations provide that a non-licensed contractor is ineligible for Government contracts. The policy of these regulations is plain. They require contracting officers to exercise their judgment and discretion by giving due consideration to certain enumerated factors. Contract awards are to be made on the basis of these factors alone and not in a mechanical way. To the extent that the Arkansas statute precludes federal officials from effectuating their considered judgment in accordance with the regulations, it conflicts with an assertion of federal power and must yield.

In the instant cases, there is no question but that the contracts were awarded in accordance with the governing federal law and regulations, that responsible determinations were made that the national policy would be furthered by the award of these contracts to appellants rather than to other bidders licensed by the State of Arkansas. Acting pursuant to its statute, however, the State is attempting in these proceedings to nullify these determinations. The State's position is that the United States must employ a contractor approved by the State or forego the

performance of federal functions in Arkansas. The State, in effect, warns the Government that if the United States persists in determining for itself the means of implementing national policy, the State will prosecute the Government's agents, will enjoin them from performing their contracts and will prevent the United States from enforcing its contractual rights. Such action by the State can hardly be regarded as the normal permissible incidents of the operation within the same territory of a dual system of government. Plainly, the national procurement policy established by Congress is wholly inconsistent with the continued existence of these burdens. The Arkansas statute must, therefore, give way.

(h)

CONCLUSION

For the foregoing reasons it is respectfully submitted that the judgment of the Supreme Court of Arkansas (R. 13) affirming the judgment of the Circuit Court of Pulaski County, Arkansas, First Division (R. 6) and its order (R. 15) denying appellant's petition for a rehearing (R. 14-15) should be reversed and the Supreme Court of Arkansas should be directed upon remand of the case, to enter judgment reversing the judgment of the Circuit Court of Pulaski County, Arkansas, and directing that Court upon remand of the case, to dismiss the information (R. 1-2) filed against this appellant.

LEFFEL GENTRY,
Pyramid Life Building,
Little Rock, Arkansas,
Attorney for Appellant.

APPENDIX

(1) Act 124 of the Acts of the General Assembly of Arkansas for the Year 1939.

AN ACT to Regulate the Practice of General Contracting in the State of Arkansas: Creating and Establishing a State Licensing Board for General Contractors: Defining the Term "General Contractor," as Herein Used: Providing for the Appointment of Said Board, and for the Issuance of Licenses to General Contractors, as Well as for Said Board's Revocation of Said Licenses: Authorizing the Fixing of Reasonable Fees to Be Paid by Licensees for the Purpose of Defraying the Costs or Issuing Licenses Hereunder: Providing for Court Review of Adverse Ruling of Said Board: Prohibiting Engaging in Business as General Contractor Without First Complying With the Provisions of this Act: Fixing Penalties for the Violation of This Act; and Repealing All Laws, or Parts of Laws in Conflict Therewith, and for Other Purposes.

Be It Enacted by the General Assembly of the State of Arkansas:

SECTION 1. That for the purposes of this Act a "General Contractor" is defined to be any person, firm, partnership, co-partnership, association, corporation, or other organization, or any combination thereof, who for a fixed price, commission, fee or wage attempts to or submits a bid or bids to construct, or undertakes to construct, or assume charge of the construction, erection, alteration, repair, or have constructed, erected, altered, or repaired, under his, their or its direction, any building, highway, sewer, grading, or any improvement or structure when the cost of the undertaking is Ten Thousand Dollars ($10,000.00) or more, and one who shall engage in the construction or superintending the construction of any structure or any undertaking or improvements, as above mentioned in the State

of Arkansas, costing Ten Thousand Dollars ($10,000.00) or more, shall be deemed to have engaged in the business of general contracting in the State of Arkansas, provided that this definition shall not include architects or engineers, whose only financial interest in the projects shall be the architectural or engineering fees for preparing plans and specifications, surveys and supervision.

SECTION 2. That there is hereby created a State Licensing Board for General Contractors, consisting of five (5) members, who shall be appointed by the Governor. Each member shall be at least thirty-five (35) years of age, a resident of the State of Arkansas, and a general contractor of not less than ten (10) years' experience in responsible charge of construction projects of magnitude consistent with the duties of his office. At least one member of such Board shall have had as a larger part of his business the construction of highways. At least one member of such Board shall have had as a larger part of his business the construction of sewers and waterworks. At least one member of such Board shall have had as larger part of his business the construction of buildings. The members of the Board shall be appointed for one, two, three, four, and five years, respectively, their terms expiring on the 31st day of December of said year. Thereafter in each year the Governor shall appoint to fill the vacancy caused by expiration, for a term of five years. Each member shall hold over, after the expiration of his term, until his successor shall be duly appointed and qualified. If a vacancy shall occur in the Board for any cause, same shall be filled by appointment by the Governor, and the Governor may remove any member of the Board at any time for misconduct, incompetency or neglect of duty.

SECTION 3. That each member of the Board shall receive a certificate of appointment from the Governor, and, before entering upon the discharge of the duties of his

office, shall file with the Secretary of State the constitutional oath of office. Each member of the Board first created shall receive a license to operate as a general contractor under this Act from the Governor, and thereafter no one shall be eligible for appointment on the Board who does not at the time hold an unexpired license to operate as a general contractor in Arkansas under this Act, and who has not been a *bona fide* resident of Arkansas for the previous five (5) years, and at the time of appointment does not maintain his general office in Arkansas. The Board, or any Committee thereof, shall be entitled to the services of the Attorney General, or the Legal Department of the State, in connection with the operation of the affairs of the Board. Such additional legal counsel, however, may be employed by the Board from time to time as it may deem necessary.

SECTION 4. That the Board shall, within thirty (30) days after its appointment by the Governor, meet in the City of Little Rock at a time and place to be designated by the Governor, and at said meeting shall elect a Chairman, Vice-Chairman, and Secretary each to serve in his respective capacity for one year, and thereafter said officers shall be elected by said Board annually. Said Board shall have power to make such by-laws, rules, and regulations for its operation as it shall deem best; provided the same are not in conflict with the laws of the State of Arkansas. The Board shall adopt a seal for its own use. The seal shall have on it the words, "Arkansas State Licensing Board for General Contractors, Seal," and the Secretary shall have charge, care and custody thereof. That within sixty (60) days after the Board has been organized, it shall meet for the purpose of receiving applications for certificates to engage in the business of general contracting, and for the transaction of such other business as may come before it, and thereafter shall have two (2) regular meetings in each year; one in the month of February, and one in

the month of August, for the purpose of transacting such business as may properly come before it, or call of the Chairman of the Board. Special or adjourned meetings may be held at such time as the Board may provide by the by-laws which it shall adopt, or at such time as the Board may, by reasonable resolution, provide. Due notice of each meeting and the time and place thereof shall be given to each member in such manner as the by-laws shall provide. Three (3) members of the Board shall constitute a quorum. All meetings of the Board shall be held in Little Rock, Arkansas.

SECTION 5. The Secretary shall keep a record of the proceedings of said Board, and shall receive and turn over to the Treasurer of the State of Arkansas all moneys derived from the operation of this Act, and shall draw and certify all vouchers for expenses incurred by the Board. The said vouchers shall be countersigned by the Chairman of the Board, and drawn to the Auditor of the State of Arkansas who shall issue warrants to the Treasurer of the State of Arkansas for the payment of such certified expenses. All moneys received by the State Treasurer shall be kept by him as a separate fund styled "General Contractor's Fund." The Secretary shall give bond in such sum as the State Treasurer shall determine with such surety company as shall be approved by the State Treasurer, said bond to be conditioned upon the faithful performance of the duties of his office, and upon the faithful accounting of all moneys and other properties which shall come into his hands.

SECTION 6. That each member of the Board shall receive Ten Dollars ($10.00) per day while said Board is in session, and reimbursement for necessary traveling expense, board and lodging. The Board shall be further empowered to employ an Assistant Secretary who is qualified to report the proceedings had before and by the Board, and whose salary shall not exceed the sum of Eighteen

Hundred Dollars ($1,800.00) per year. All expenses incurred by the Board for Administration of this Act are hereby authorized to be paid by the Board.

SECTION 7. That the Secretary shall keep a register of all applications for license showing for each the date of application, name, qualification, place of business, place of residence, and whether the license was granted or refused, as well as a complete transcript of the proceedings, including evidence submitted by applicants, licensees, the Board, or otherwise, at any hearing. The books and register of this Board, including transcripts of proceedings, shall be *prima facie* evidence of all matters recorded therein, and a certified copy of such books or register, including transcript of proceedings, under the seal of the Board, attested by its Secretary, shall be received in evidence in all courts of the State in lieu of the original. A roster showing the names and places of business and of residence of all licensed general contractors shall be prepared by the Secretary of the Board as soon as convenient, and not more than ninety (90) days after the Board shall have organized, and during the month of January of each succeeding year. Such roster shall be ordered printed by the Board and paid for out of the funds herein appropriated for the operation of this Act. On or before the first day of March of each year, the Board shall submit to the Governor a report of its transactions for the preceding year, and shall file with the Secretary of State a copy of such report, together with a complete statement of receipts and expenditures of the Board attested by the affidavit of the Chairman and Secretary, and copy of said roster of licensed general contractors.

SECTION 8. That any one, other than members selected by the Governor as hereinbefore provided, hereafter desiring to be licensed as a general contractor in this State shall make and file with the Board thirty (30) days prior

to any regular or special meeting thereof, a written application on such form as may then be by the Board prescribed, for examination by the Board, said application to be accompanied by a certified check in the sum of Fifty Dollars ($50.00) payable to the Arkansas State Licensing Board for General Contractors. If said application complies with the Board's rules and regulations, then the applicant shall be entitled to an examination to determine his, their, or its qualifications. If the result of the examination of any applicant shall be satisfactory to the Board, then the Board shall issue to the applicant a certificate to engage in general contracting in the State of Arkansas. Any person thus receiving a certificate of license from the Board shall forthwith have it recorded in the office of the Secretary of State, and the date of recording shall be evidenced thereon. Until the license is recorded, the holder thereof shall not exercise any of the rights or privileges therein conferred, and in case such license is not recorded within sixty (60) days from the date of its issuance it shall become invalid. The Secretary of State shall be paid a fee of $1.00 for recording said certificate, and shall keep in a book to be provided by him for that purpose a complete list of certificate of license recorded by him, together with the date of each, and the date of recording. Any applicant failing to pass the examination prescribed by the Board shall be entitled to the refund of his, their or its fee accompanying the application. Any one failing to pass such examination may be re-examined at any regular meeting of the Board upon payment of regular fee. The certificate of authority to engage in the business of general contracting in the State of Arkansas shall expire the last day of December following the issuance or renewal, and shall become invalid on that date unless renewed. A fee of Fifty Dollars ($50.00) payable at the time of the filing of the application, as hereinbefore provided, shall be assessed against each applicant, and thereafter an annual

license fee in the sum of Fifty Dollars ($50.00) shall be paid by each Licensee to defray the costs and expenses of the operation of this Act.

SECTION 9. That the Board, in determining the qualifications of any applicant for original license, or any renewal license, shall, among other things, consider the following: (a) experience, (b) ability, (c) character, (d) the manner of performance of previous contracts, (e) financial condition, (f) equipment, (g) any other fact tending to show ability and willingness to conserve the public health and safety, and (h) default in complying with the provisions of this Act, or any other law of the State. A record shall be made and preserved by the Board of each examination of applicant or licensee, and the findings of the Board thereon, and a certified copy of the record shall be furnished to any applicant or licensee desiring to appeal from the findings of said Board, as hereinafter provided, upon payment of the costs of transcribing such record.

SECTION 10. That the Board shall have power to limit the license to that character of work for which the applicant is qualified.

SECTION 11. That the Board shall have the power to revoke the certificate of license of any general contractor licensed hereunder who is found guilty of any fraud or deceit in obtaining a license or for gross negligence, incompetence or misconduct in the conduct of his, their, or its business. Any person may prefer charges of such fraud, deceit, negligence or misconduct against any general contractor licensed hereunder. Such charge shall be in writing and sworn to by the complainant and mailed to the Board. Such charges, unless dismissed without hearing by the Board as unfounded or trivial, shall be heard and determined by the Board within thirty days after the date on which they were made. A time and place for such hearing shall be fixed by the Board and held in the City of Little

Rock, County of Pulaski, and State of Arkansas. A copy of the charges, together with the notice of the time and place of hearing, shall be considered as legally served by the Board when sent to the last known address of the accused by registered mail, at least ten days before the fixed date for the hearing, and in the event that such service cannot be effected ten days before such hearing; then the date of hearing and determination shall be postponed as may be necessary to permit the carrying out of this condition. At said hearing the accused shall have the right to appear personally and by counsel, and to cross-examine witnesses against him, them or it, and to submit evidence in his, their or its behalf and defense. If after said hearing the Board finds the facts as alleged and of such character as to disqualify the licensee, then the Board shall revoke the license of the accused, but in such event no refund shall be made of the license fee. The Board may, within its discretion and upon proper application or hearing, reissue a license to any person, firm or corporation whose license has been revoked. The Board shall immediately notify the Secretary of State of its findings in the case of a revocation of a license, or of a reissuance of a revoked license. A certificate of license to replace any certificate lost, destroyed or mutilated may be issued subject to the rules and regulations of the Board.

SECTION 12. That the issuance of a certificate of license by this Board shall be evidence that the person, firm or corporation named therein is entitled to all of the rights and privileges of a licensed general contractor while the said license remains unrevoked or unexpired.

SECTION 13. That any person, firm or corporation not being duly authorized, who shall engage or attempt to engage in the business of general contracting in this State, except as provided for in this Act, and any person, firm or corporation presenting or attempting to file as their

own the license certificate of another, or who shall give false or forged evidence of any kind to the Board, or to any member thereof, in obtaining a certificate of license, or who shall impersonate another, or who shall use an expired or revoked certificate or license, shall be deemed guilty of a misdemeanor, and shall be liable to a fine of not less than One Hundred Dollars ($100.00), nor more than Two Hundred Dollars ($200.00), for each offense, each day to constitute a separate offense.

SECTION 14. That in all prosecutions for violations of the provisions of this Act for engaging in the business of general contracting without a certificate of authority, it shall be sufficient to allege in the indictment, affidavit or complaint that "A. unlawfully engaged in business as a general contractor, without authority from the State Licensing Board for General Contractors so to do."

SECTION 15. That the following shall be exempted from the provisions of this Act: The practice of general contracting as defined in Section 1 of this Act by an authorized representative or representatives of the United States Government, State of Arkansas, incorporated town, city or county, or other political subdivision in this State.

SECTION 16. That a corporation or partnership may engage in the business of general contracting; provided, at least one of the principals of such corporation or partnership is in responsible charge of such business and is licensed as herein required of general contractors.

SECTION 17. That when any contractor not being licensed by this Board in accordance with the provisions of this Act, shall engage, or attempt to engage, in the business of general contracting as herein defined, the Board shall have the right to go into the proper court in the jurisdiction in which the work is being performed, and upon affidavit secure a writ of injunction, without bond, restrain-

ing and prohibiting the said contractor from performance of the work then being done, or about to commence.

SECTION 18. That all architects and engineers preparing plans and specifications for work to be contracted in the State of Arkansas shall include in their invitation to bidders and in their specifications a copy of this Act, or such portions thereof, as are deemed necessary to convey to the invited bidder, whether he is a resident of this State, or not, the information that it will be necessary for him to have evidence of a license before his bid is considered.

SECTION 19. That any party aggrieved by any decision of the State Licensing Board for General Contractors shall have the right to seek review thereof by filing a petition within thirty (30) days from the finding made by said Board before any division of the Circuit Court of Pulaski County, Arkansas, in which said aggrieved party shall set out in what respect the adverse action of the Board complained of is erroneous and prejudicial, and shall request the court to review the record of the findings of said Board. Upon trial duly had, the record of the examination and hearing by the Board shall be reviewed by the Circuit Court, and at the conclusion thereof the court shall either uphold the action of the Board or shall direct the granting of the application for license denied, or the reinstatement of the license revoked, as the case may be from which an appeal may be taken either by the applicant or by the Board to the Supreme Court as in other cases.

SECTION 20. That if any Section, sentence or provision of this Act shall be held unconstitutional, such holding shall not affect the remainder of the Act not in itself unconstitutional.

SECTION 21. That all laws or parts of laws in conflict herewith be, and the same are hereby, repealed.

SECTION 22. It is hereby determined and declared to be a fact that the practice of general contracting in the State of Arkansas is in need of regulation; that due to unethical practices, contractors within the State are being unduly penalized and are suffering irreparable injury, and this Act, being necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this Act shall take effect and be in force from and after its passage.

APPROVED: February 24, 1939.

(2) Act 217 of the Acts of the General Assembly of Arkansas for the Year 1945.

AN ACT to Amend Sections 7, 8, and 13 of Act 124 of the Acts of the General Assembly of the State of Arkansas for the Year 1939, Approved February 24, 1939, and for Other Purposes.

Be It Enacted by the General Assembly of the State of Arkansas:

SECTION 1. That Section 7 of Act 124 of the Acts of the General Assembly of the State of Arkansas for the year 1939, approved February 24, 1939, be, and the same is hereby amended to read as follows:

"SECTION 7. That the Secretary shall keep a register of all applications for license showing for each the date of application, name, qualification, place of business, place of residence, and whether the license was granted or refused, as well as a complete transcript of the proceedings, including evidence submitted by applicants, licensees, the Board, or otherwise, at any hearing. The books and register of this Board, including transcripts of proceedings, shall be *prima facie* evidence of all matters recorded therein, and a certified copy of such books or register, including transcript of proceedings, under the seal of the Board, at-

tested by its Secretary, shall be received in evidence in all courts of the State in lieu of the original. A roster showing the names and places of business and of residence of all licensed general contractors shall be prepared by the Secretary of the Board as soon as convenient, and not more than ninety (90) days after the Board shall have organized, and during the month of August of each succeeding year. Such roster shall be ordered printed by the Board and paid for out of the funds herein appropriated for the operation of this Act. On or before the first day of August of each year, the Board shall submit to the Governor a report of its transactions for the preceding year, and shall file with the Secretary of State a copy of such report, together with a complete statement of receipts and expenditures of the Board attested by the affidavit of the General Assembly of the State of Arkansas for the licensed general contractors."

SECTION 2. That Section 8 of Act 124 of the Acts of the General Assembly of the State of Arkansas for the year 1939, approved February 24, 1939, be, and the same is hereby amended to read as follows:

"SECTION 8. That any one, other than members selected by the Governor as hereinbefore provided, hereafter desiring to be licensed as a general contractor in this State shall make and file with the Board thirty (30) days prior to any regular or special meeting thereof, a written application on such form as may then be by the Board prescribed, for examination by the Board, said application to be accompanied by a certified check in the sum of Fifty Dollars ($50.00)payable to the Arkansas State Licensing Board for General Contractors. If said application complies with the Board's rules and regulations, then the applicant shall be entitled to an examination to determine his, their, or its qualifications. If the result of the examination of any applicant shall be satisfactory to the Board,

then the Board shall issue to the applicant a certificate to engage in general contracting in the State of Arkansas. Any person thus receiving a certificate of license from the Board shall forthwith have it recorded in the office of the Secretary of State, and the date of recording shall be evidenced thereon. Until the license is recorded, the holder thereof shall not exercise any of the rights or privileges therein conferred, and in case such license is not recorded within sixty (60) days from the date of its issuance it shall become invalid. The Secretary of State shall be paid a fee of $1.00 for recording said certificate, and shall keep in a book to be provided by him for that purpose a complete list of certificates of license recorded by him, together with the date of each, and the date of recording. Any applicant failing to pass the examination prescribed by the Board shall be entitled to the refund of his, their or its fee accompanying the application. Any one failing to pass such examination may be re-examined at any regular meeting of the Board upon payment of regular fee."

The certificates of authority to engage in the business of general contracting in the State of Arkansas issued in the year 1945 shall expire June 30, 1946, and thereafter all certificates of authority issued shall expire the last day of June following the issuance or renewal, and shall become invalid on that date unless renewed. A fee of Fifty Dollars ($50.00), payable at the time of filing the application as hereinbefore provided, shall be assessed against each applicant and thereafter an annual license fee in the sum of Fifty Dollars ($50.00) shall be paid by each Licensee to defray the cost and expenses of the operation of this Act.

SECTION 3. That Section 13 of said act 124 of the Acts of the General Assembly for the year 1939, be, and the same is hereby amended to read as follows:

"SECTION 13. That any person, firm or corporation not being duly authorized, who shall engage or attempt

to engage in the business of general contracting in this State, except as provided for in this Act, and any person, firm or corporation presenting or attempting to file as their own the license certificate of another, or who shall give false or forged evidence of any kind to the Board, or to any member thereof, in obtaining a certificate of license, or who shall impersonate another, or who shall use an expired or revoked ertificate or license, shall be deemed guilty of a misdemeanor, and shall be liable to a fine of not less than One Hundred Dollars ($100.00), nor more than Two Hundred Dollars ($200.00), for each offense, each day to constitute a separate offense." And provided further that no action may be brought either at law or in equity to enforce any provision of any contract entered into in violation of this Act.

SECTION 4. That all laws and parts of laws in conflict herewith are hereby repealed.

SECTION 5. Whereas, with the close of the present war a great revival in contracting in this State is anticipated, and with the increase in construction business a vast influx of contractors from other sections is anticipated. That it is vitally essential that the responsibility and experience of these contractors be known in order to prevent unfair competition and delay in construction of vitally needed facilities, therefore, this Act being necessary for the immediate preservation of the public peace, health and safety an emergency is hereby declared and this Act shall take effect and be in full force from and after its passage.

APPROVED: March 20, 1945.